

JUN 16 1995

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF SECRETARY

In the Matter of)
)
 JAMES A. KAY, JR.)
)
 Licensee of One Hundred Sixty)
 Four Part 90 Licenses in the)
 Los Angeles, California Area)

WT Docket No. 94-147

To: Administrative Law Judge Richard L. Sippel

JOINT REQUEST FOR STAY

The Wireless Telecommunications Bureau (the "Bureau") and James A. Kay, Jr. ("Kay"), by their respective attorneys, hereby respectfully request that the Hearing proceedings in the above-captioned matter be stayed for a period of 120 days to assist in the parties' efforts to settle this matter. The Bureau and Kay submit the following in support of this Request.

1. This case was designated for Hearing pursuant to the Commission's Order to Show Cause, Hearing Designation Order and Notice of Opportunity For Hearing released on December 13, 1994. In this currently pending matter involving approximately 164 Commission authorizations, the parties have been engaged in discovery, much of which still needs to be completed, in preparation for Hearing. The Hearing is to be conducted in both Washington, D.C. and Los Angeles, California.

2. In addition to preparing for the Hearing, and in line with stated Commission policy favoring the settlement of pending litigation, see, e.g., RKO General, Inc., 3 FCC Rcd. 5057, 5059

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(1988), the parties have been engaged in negotiations to determine whether it may be possible to reach a settlement in this matter.

3. As of June 14, 1995, the attached Memorandum of Understanding (the "Memorandum") was fully executed by the Bureau and Kay. This Memorandum contemplates the settlement of this proceeding without the need for any further Hearing proceedings.

4. The Memorandum provides that Kay will no longer own, operate, control, manage, or have any interest of any kind or amount whatsoever, directly or indirectly, in any Commission authorization or application for Commission authorization. In order to accomplish the complete disposition of Kay's interests in FCC authorizations, Kay will surrender certain Commission authorizations he holds, and he will be permitted to assign other authorizations subject to approval by the Commission. In the instances where Kay assigns authorizations, Kay will make a significant voluntary contribution to the United States Treasury based upon the amounts he receives for the assignments.

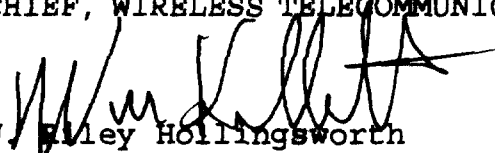
5. Due to the large numbers of stations involved, a significant amount of work must be accomplished by both the Bureau and Kay in an effort to assemble a settlement package which can be presented for approval.^{1/} It would, therefore, be in the public interest to afford the parties an adequate opportunity to perform all the work which is necessary to assemble a complete settlement package which would form the basis for a consent order. See, 47

^{1/} For example, the Bureau must examine evidence relating to all of Kay's authorizations to determine which, if any, may be assigned; Kay must attempt to find buyers for his facilities, negotiate contracts and prepare necessary applications.

C.F.R. 1.94(a). The parties anticipate that this can be accomplished within 120 days.

WHEREFORE, the Bureau and Kay respectfully request that all procedural deadlines (including the deadlines established in Order, FCC 95M-142 (rel. June 15, 1995)) be stayed for a period of 120 days to enable the parties to work out a complete settlement package for presentation to the Presiding Officer.

Respectfully submitted,
Regina M. Keeney
CHIEF, WIRELESS TELECOMMUNICATIONS BUREAU

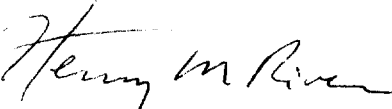


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ATTORNEYS FOR JAMES A. KAY, JR.

Dated: June 16, 1995

MEMORANDUM OF UNDERSTANDING

For the purposes of resolving all pending matters involving James A. Kay, Jr. ("Kay"), including the revocation proceeding in WT Docket No. 94-147, and assuring that the public interest, convenience, and necessity will be served, the Wireless Telecommunications Bureau ("Bureau") and Kay hereby agree in principle as follows:

A. Overview

The parties agree in principle to enter into a consent order which will be subject to Commission approval and contain the following provisions:

1. **Authorizations to be Relinquished.** Except for the authorizations noted in ¶ A(4) below for which the Bureau shall permit assignment applications to be filed, Kay shall relinquish to the Commission for the purpose of immediate cancellation all authorizations that he holds or in which he has an interest, regardless of service, including, but not limited to authorizations in the Land Mobile Radio, Amateur Radio, and General Mobile Radio Services. The authorizations to be relinquished for cancellation will be identified in a consent order.
2. **Authorizations to be Modified.** For the purpose of deleting a certain number of trunked channels from SMR stations currently authorized to Kay, Kay shall file appropriate applications with the Commission seeking modification of certain of his land mobile radio authorizations in conjunction with the assignment applications described below in ¶ A(4) below. The authorizations will be identified in a consent order.
3. **Withdrawal of Pending Applications, etc.** Kay shall request the withdrawal of all applications, petitions for reconsideration, and other appeals pending before the Commission or any delegated authority filed by him or on his behalf.
4. **Assignment of Licenses.** The Bureau shall permit applications seeking the assignment of licenses and sale of all property associated with certain of Kay's land mobile radio stations to be filed. The stations will be identified in a consent order. In determining the stations for which Kay shall be permitted to seek assignment of license, the Bureau shall rely on information provided by Kay and any other source of information that the Bureau deems appropriate. In this regard, Kay shall provide all available information within his possession, custody, or control requested by the Bureau without objection or claim of privilege, and he shall certify under penalty of perjury to the veracity

of the information he provides and the unavailability, if any, of the information that he does not provide. Kay shall also permit Commission personnel to inspect any or all of his stations (including offices and technical facilities) upon reasonable notice. In the absence of extenuating circumstances, advance notice of at least six hours shall be deemed to constitute reasonable notice.

5. Court Intervention and Equal Access to Justice. Kay shall agree to submit to the jurisdiction of any United States District Court to enforce the terms of the consent order; to waive his right to a trial *de novo*; and, in the event of a violation of the consent order, to consent to a judgment incorporating the terms of the consent order. Kay shall agree to waive any claim he may have under the Equal Access to Justice Act, Title 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*

6. Forfeiture Proceedings. The Bureau shall agree that all outstanding forfeitures owed by Kay to the Commission shall be deemed to be satisfied upon payment by Kay to the United States Treasury of the amounts specified herein.

7. Kay's Future Involvement Before the FCC. Kay shall agree not to henceforth own, operate, control, manage, or have any interest of any kind or amount whatsoever, directly or indirectly, in any Commission authorization or application for Commission authorization.

Kay shall not be precluded from being: (a) a customer of a Commission licensee; (b) a lessor of property in or on which a facility licensed by the Commission is located; (c) a paid employee of a Commission licensee; (d) a lessor or vendor of radio transmitting equipment; (e) a broker of radio transmitting properties; or (f) a consultant in the radio communications business, or from owning stock in a publicly-traded corporation, so long as his interest in the publicly-traded corporation does not exceed five (5) percent of the corporation's outstanding common stock.

Kay shall agree to cease and thereafter refrain from being a paid employee of, or consultant to, any entity to whom he assigned any of his licenses or any station whose license he sold following one year after the date on which the Commission grants the assignment applications.

8. Waiver of Participation in FCC Discussions. Kay shall agree to unconditionally waive any right to participate in any discussions concerning the merits of the proposed settlement involving the Bureau, Commission, and/or the Office of General Counsel.

9. Future Litigation. Kay shall agree to henceforth refrain from commencing a lawsuit, filing a complaint, or bringing an action of any kind in any court or before any licensing or administrative body in any jurisdiction against any Commission employee in connection with the employee's performance of his or her official duties. Kay shall also agree not to direct, order, or otherwise encourage any person or entity to commence a lawsuit, file a complaint, or bring an action of any kind in any court or before any licensing or administrative body in any jurisdiction against any Commission employee in connection with the employee's performance of his or her official duties.

B. Terms of Sale

1. Assignment Applications. The Bureau shall permit applications seeking the assignment of licenses of the land mobile radio stations referenced in ¶ A(4) above to be filed. Each assignment application shall include all contracts, agreements, understandings, etc., for the sale of all "associated property," as that term is defined below.

The term "associated property" means all property, tangible and intangible, used, employed, and/or relied upon by Kay in operating the station and conducting the business of the station as of May 25, 1995, and specifically includes all leaseholds held by Kay or by entities that Kay owns or controls.

No proposed assignee shall be required, as a condition to buying any of Kay's stations, to employ Kay or to retain him as: a lessor of property in or on which a facility licensed by the Commission is located; a lessor or vendor of radio transmitting equipment; a broker of radio transmitting properties; or a consultant in the radio communications business.

Each assignment application that is filed shall be accompanied by a document which contains, with respect to the proposed assignee, all of the ownership information referenced in and required by § 73.3615 of the Commission's Rules.

The Bureau shall agree to support the grant of each application for assignment of license which, in the Bureau's opinion, complies with all Commission and statutory requirements and which contemplates the sale of the station as a complete, operating business, at a price representing the station's fair market value, at an interest rate which is commercially reasonable using generally accepted accounting procedures. The Bureau reserves the right, in good faith, to require an independent appraisal, at Kay's expense, in the event of a dispute between Kay and the Bureau over the nature, extent, and value of associated property offered for sale.

2. Assignees and Set-Asides. Except as noted below, the stations referenced in ¶ A(4) above may be sold to any person or entity. However, Kay shall agree to set aside and offer for sale at fair market value to state and/or local government agencies at least ten percent of the number of base stations which operate on 460 - 512 MHz. Kay shall provide appropriate documentation to the Bureau of his good faith efforts to assign stations to state and/or local government agencies. If Kay's good faith efforts fail after 30 calendar days to produce a state and/or local government agency that is ready, willing, and able to purchase a particular station, then the station may be offered to any entity at a price not less than the price offered to state and/or local government agencies. Furthermore, Kay shall agree not to sell any of the stations referenced in ¶ A(4) above to any relative or employee or any business associate with whom Kay has an ongoing relationship with respect to Commission-authorized stations.

3. Contribution to U.S. Treasury. Kay shall agree in a consent order to make a voluntary contribution to the United States Treasury in an amount equal to thirty percent (30%) (the "Percentage Contribution") of the gross sales price of the stations and associated properties sold, and of the gross sales price of any ownership interest in any Commission authorization assigned, sold, transferred, or divested pursuant to the consent order.

The Percentage Contribution shall be paid in full to the United States Treasury within ten (10) calendar days from the date on which the Commission releases the order granting the assignment applications. The failure to make such Percentage Contribution in full or on time will be considered a material breach and result in rescission of the grant of the assignment applications.

Kay shall agree that his Percentage Contributions to the United States Treasury shall not be tax deductible for federal or state or local income tax purposes.

C. Proposed Process

1. The parties shall file with the Presiding Judge a joint request to stay the proceeding for a specified period of time to permit the preparation of all documents incident to the settlement of this proceeding.

2. On or before the end of the stay period, Kay and the Bureau shall file with the Presiding Judge the following:

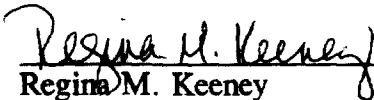
- a. A joint request, directed to the Presiding Judge, seeking certification of the proposed settlement package to the Commission.

b. A joint request, directed to the Commission, for extraordinary relief, seeking: (a) permission to assign Kay's licenses via distress sale, and (b) the grant of attached executed applications (including all agreements, contracts, etc.) for consent to the assignment of Kay's licenses.

c. A joint request, directed to the Commission, seeking: (a) approval of an attached consent order executed by Kay and the Bureau, and (b) termination of WT Docket No. 94-147. The consent order shall fully embody the terms of the settlement as outlined above.

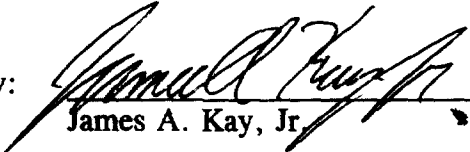
It is expressly understood and agreed that the Bureau makes no representations or warranties with respect to (i) its authority to enter into this Memorandum of Understanding; (ii) its authority to enter into the consent order contemplated by this Memorandum of Understanding; or (iii) the Commission's approval of such consent order. In the event that (i) the Bureau determines that it does not have authority to enter into the consent order or the terms outlined herein, or (ii) the Commission does not approve of said consent order, then neither the Bureau nor the Commission shall have any obligation hereunder or under the consent order.

REGINA M. KEENEY
CHIEF, WIRELESS TELECOMMUNICATIONS BUREAU

By: 
Regina M. Keeney

Date: 6/14/95

JAMES A. KAY, JR.

By: 
James A. Kay, Jr.

Date: 6/13/95